



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2003

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P. O. Box 13247
Austin, Texas 78711

OR2003-6997

Dear Ms. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188810.

The Texas Health and Human Services Commission (the "commission") received a request for a copy of the "out of network providers reimbursement methodology" submitted by Texas Children's Health Plan (TCHP) and HMO Blue Texas (Blue). You claim that the requested information may be excepted from disclosure pursuant to section 552.110 of the Government Code, but you take no position with regard to the application of this exception to disclosure to the requested information.

In accordance with section 552.305(d) of the Government Code, the commission notified TCHP and Blue of the records requests and of their right to submit arguments to this office as to why the requested information pertaining to TCHP and Blue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990). We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B).

As of the date of this ruling, this office has not received any arguments from TCHP or Blue explaining why either entity believes the requested information is excepted from disclosure. Therefore, neither TCHP nor Blue has provided this office with any grounds for concluding that any of the submitted information is excepted from disclosure. As a result, none of the

submitted information may be withheld based on TCHP's or Blue's proprietary interests. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm); 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Thus, we find that the commission must release the submitted information in full. If any of the interested third parties believes that the submitted information is proprietary and therefore excepted from public disclosure, it may pursue its legal remedies in court. *See* Gov't Code §§ 552.3215, .325.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 188810

Enc. Submitted documents

c: Silvania N. Guillen
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(w/o enclosures)